

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 \* \* \*

4 Allan Moore,

5 Plaintiff,

6 v.

7 METRO Police Department, et al,

8 Defendants.

Case No. 2:24-cv-01684-JAD-BNW

**ORDER ADOPTING  
REPORT and  
RECOMMENDATION**

ECF No. 5

9  
10 **On 4/3/25, the magistrate judge entered this order, report, and recommendation [5]:**

11 Nevada state-prison inmate Allan Moore brings this civil-rights case under 42 U.S.C.  
12 § 1983 for events that occurred after his apartment was burglarized. Mr. Moore submitted the  
13 declaration required by 28 U.S.C. § 1915(a) showing an inability to prepay fees and costs or give  
14 security for them. ECF No. 1. As a result, his request to proceed *in forma pauperis* will be  
15 granted.

16 The court now screens Mr. Moore's complaint (ECF No. 1-1) as required by 28 U.S.C.  
17 § 1915A(a) and reviews his motion for appointment of counsel (ECF No. 1-2).

18 **I. Screening Standard**

19 Federal courts must conduct a preliminary screening in any case in which a prisoner seeks  
20 redress from a governmental entity or officer or employee of a governmental entity. *See* 28  
21 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any  
22 claims that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek  
23 monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1),  
24 (2). In addition to the screening requirements under § 1915A, the Prison Litigation Reform Act  
25 requires a federal court to dismiss a prisoner's claim if it "fails to state a claim on which relief  
26 may be granted." 28 U.S.C. § 1915(e)(2); *accord* Fed. R. Civ. Proc. 12(b)(6).

27 Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for  
28 failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668  
F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must "contain sufficient

1 factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *See Ashcroft*  
2 *v. Iqbal*, 556 U.S. 662, 678 (2009). The court liberally construes pro se complaints and may only  
3 dismiss them “if it appears beyond doubt that the plaintiff can prove no set of facts in support of  
4 his claim which would entitle him to relief.” *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir.  
5 2014) (quoting *Iqbal*, 556 U.S. at 678).

6 In considering whether the complaint states a claim, all allegations of material fact are  
7 taken as true and construed in the light most favorable to the plaintiff. *Wylar Summit P’ship v.*  
8 *Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted). Although the  
9 standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must provide  
10 more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555  
11 (2007). A formulaic recitation of the elements of a cause of action is insufficient. *Id.* But unless it  
12 is clear the complaint’s deficiencies could not be cured through amendment, a pro se plaintiff  
13 should be given leave to amend the complaint with notice regarding the complaint’s deficiencies.  
14 *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

15 Section 1983 creates a cause of action against a “person who, under color of any [state  
16 law], subjects, or causes to be subjected, any [person] to the deprivation of any rights, privileges,  
17 or immunities secured by the Constitution and laws.” 42 U.S.C. § 1983. “Section 1983 does not  
18 create any substantive rights; rather it is the vehicle whereby plaintiffs can challenge actions by  
19 governmental officials.” *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). A plaintiff  
20 bringing a claim under § 1983 must show that “(1) the action occurred ‘under color of state law’  
21 and (2) the action resulted in the deprivation of a constitutional right or federal statutory right.”  
22 *Id.* (citation omitted).

## 23 **II. Factual Allegations**

24 Mr. Moore alleges that his apartment was burglarized on February 3, 2024. At that  
25 time he was incarcerated, so he could not file a report with the police department. Several of his  
26 family members and friends (who based on the complaint appear to be black) attempted to file a  
27 report (several times) and were not allowed to do so. His cousin was able to file a report online,  
28 but no investigation ensued. In short, he lost \$60,000 worth of property. In turn, he attempts to

1 assert the following claims: “procedural due process right,” “equal protection right,” and the  
2 “right not to be discriminated against” based on his race. He seeks compensatory and punitive  
3 damages.

### 4 **III. Analysis**

#### 5 **A. Fourteenth Amendment due process**

6 To state a Fourteenth Amendment procedural due process claim, a plaintiff must allege he  
7 was deprived of a constitutionally protected liberty or property interest without due process.  
8 *Armstrong v. Reynolds*, 22 F.4th 1058, 1066 (9th Cir. 2022).

9 Mr. Moore cannot sue defendants Clark County and Metro for the actions of its  
10 employees. There is no respondeat superior liability in § 1983 actions. A municipality may be  
11 liable under § 1983 only if the municipality itself caused the violation at issue. *City of Canton*,  
12 *Ohio v. Harris*, 489 U.S. 378, 385 (1989) (citing *Monell v. New York City Dept. of Social*  
13 *Services*, 436 U.S. 658 (1978)). Thus, to state a claim against these defendants, Mr. Moore must  
14 allege that he suffered a constitutional deprivation that was caused by a policy or custom  
15 attributable to Clark County or Metro. While a single occurrence will not suffice to show the  
16 existence of a policy, one may be inferred from widespread practices or “evidence of repeated  
17 constitutional violations for which the errant municipal officers were not discharged or  
18 reprimanded.” *Gillette v. Delmore*, 979 F.2d 1342, 1349 (9th Cir.1992).

19 The Ninth Circuit has clearly stated that an inadequate police investigation is insufficient  
20 to state a civil rights claim unless there was another recognized constitutional right involved.  
21 *Gomez v. Whitney*, 757 F.2d 1005, 1006 (9th Cir. 1985). This Court recognizes that Mr. Moore  
22 alleges the actions here were motivated by racial animus, and it turns to that claim next. But as to  
23 this claim, this Court recommends that it be dismissed with prejudice.

#### 24 **B. Fourteenth Amendment equal protection**

25 The Equal Protection Clause of the Fourteenth Amendment requires persons who are  
26 similarly situated to be treated alike. *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432,  
27 439 (1985). A plaintiff can state an equal protection claim by setting forth facts which plausibly  
28 allege intentional discrimination based on membership in a protected class. *Hartmann v. Cal.*

1 *Dep't of Corr. & Rehab.*, 707 F.3d 1114, 1123 (9th Cir. 2013); *Maynard v. City of San Jose*, 37  
 2 F.3d 1396, 1404 (9th Cir. 1994) (“Intentional discrimination means that a defendant acted at least  
 3 in part because of a plaintiff’s protected status.”); *Fields v. Legacy Health Sys.*, 413 F.3d 943, 955  
 4 (9th Cir. 2005) (identifying “race, alienage, national origin” as examples of characteristics  
 5 protected by the Equal Protection Clause). As explained above, in order to state a claim against  
 6 these Defendants, Mr. Moore must allege constitutional deprivation that was caused by a policy  
 7 or custom attributable to Clark County or Metro.

8       Liberally construing the complaint, this Court interprets the allegations to state that the  
 9 defendants refused to accept a police report and/or failed to investigate due to racial animus and  
 10 that plaintiff suffered an injury based on the discriminatory practice.<sup>1</sup> Thus, Mr. Moore has  
 11 sufficiently asserted a *Monell* claim against Metro and Clark County based on a violation of the  
 12 Fourteenth Amendment equal protection clause.

### 13           **C. “Right not to be discriminated against”**

14       Mr. Moore’s third claim appears to be based on the same facts as the second claim. As a  
 15 result, this Court recommends it be dismissed as duplicative.

### 16           **IV. Appointment of counsel**

17       “The court may request an attorney to represent any person unable to afford counsel.” 28  
 18 U.S.C. § 1915(e)(1). Federal courts do not, however, have the authority “to make coercive  
 19 appointments of counsel.” *Mallard v. U.S. Dist. Court*, 490 U.S. 296, 310 (1989); see also *United*  
 20 *States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (forfeiture proceedings).  
 21 “The court may appoint counsel . . . only under ‘exceptional circumstances.’” *Terrell v. Brewer*,  
 22 935 F.2d 1015, 1017 (9th Cir. 1991) (Bivens action); see also *Palmer v. Valdez*, 560 F.3d 965,  
 23 970 (9th Cir. 2009) (§ 1983 action); *Agyeman v. Corr. Corp. of Am.*, 390 F.3d 1101, 1103 (9th  
 24 Cir. 2004) (Bivens action); *Burns v. Cty. of King*, 883 F.2d 819, 824 (9th Cir. 1989) (per curiam)  
 25 (§ 1983 action); *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984) (Section 1983 action).

26       “A finding of exceptional circumstances requires an evaluation of both the likelihood of  
 27 success on the merits and the ability of the petitioner to articulate his claims pro se in light of the

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28 <sup>1</sup> This Court will not analyze any potential standing issues at this stage of the litigation.

1 complexity of the issues involved. Neither of these factors is dispositive and both must be viewed  
2 together before reaching a decision.” *Terrell*, 935 F.2d at 1017 (citing *Wilborn v. Escalderon*, 789  
3 F.2d 1328, 1331 (9th Cir. 1986) (§ 1983 action)); *see also Palmer*, 560 F.3d at 970; \$292,888.04  
4 in U.S. Currency, 54 F.3d at 569; *Wood v. Housewright*, 900 F.2d 1332, 1335–36 (9th Cir. 1990)  
5 (Section 1983 claims). Appointment of counsel may be justified when proceedings will go  
6 forward “more efficiently and effectively.” *Johnson v. California*, 207 F.3d 650, 656 (9th Cir.  
7 2000) (per curiam).

8 Here, Plaintiff explains he is incarcerated, which limits his ability to research and litigate  
9 the case, and that he has limited knowledge of the legal process. The courts see hundreds of these  
10 requests which, unfortunately, do not constitute “exceptional circumstances.” While it is early in  
11 the proceedings to evaluate the likelihood of success on the merits, the Court finds that Plaintiff  
12 properly pled a claim. For those reasons, at this stage, his request is denied.

#### 13 **V. Conclusion**

14 **IT IS THEREFORE ORDERED** that Plaintiff’s motion to proceed *in forma pauperis*  
15 (ECF No. 1) is **GRANTED**.

16 **IT IS FURTHER ORDERED** that the Clerk of Court must detach and separately file  
17 Plaintiff’s complaint (ECF No. 1-1).

18 **IT IS FURTHER ORDERED** that, pursuant to 28 U.S.C. § 1915, as amended by the  
19 Prisoner Litigation Reform Act, the Southern Desert Correctional Center shall pay to the Clerk of  
20 the United States District Court, District of Nevada, 20% of the preceding month’s deposits to the  
21 account of Allan Moore, # 1272160 (in months that the account exceeds \$10.00) until the full  
22 filing fee has been paid for this action. The Clerk shall send a copy of this order to the attention of  
23 Warden Ronald Oliver, P.O. Box 208, Indian Springs, NV 89070.

24 **IT IS FURTHER ORDERED** that, even if this action is dismissed, or is otherwise  
25 unsuccessful, the full filing fee shall still be due, pursuant to 28 U.S.C. § 1915, as amended by the  
26 Prisoner Litigation Reform Act.

27 **IT IS FURTHER RECOMMENDED** that the *Monell* claim based on a violation of the  
28 Fourteenth Amendment procedural due process clause be dismissed with prejudice.

1           **IT IS FURTHER ORDERED** that the *Monell* claim based on a violation of the  
2 Fourteenth Amendment equal protection clause may proceed against METRO and Clark County.

3           **IT IS RECOMMENDED** that the third claim, “Right not to be discriminated  
4 against” be dismissed as duplicative.

5           **IT IS FURTHER ORDERED** that the motion for appointment of counsel (ECF No. 1-2)  
6 is denied.

7       **VI. Service instructions**

8           **IT IS ORDERED** that the Clerk of Court is kindly directed to issue summonses to: (1)  
9 METRO and (2) Clark County.

10          **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to deliver the  
11 summonses and two copies of the complaint filed at ECF No. 1-1 to the United States Marshals  
12 Service (“USMS”) for service.

13          **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to send Plaintiff  
14 two copies of Form USM-285.7

15          **IT IS FURTHER ORDERED** that Plaintiff must complete a USM-285 form for each  
16 Defendant against whom Plaintiff’s claims are proceeding and provide an address where each  
17 Defendant can be served with process. Once completed, Plaintiff must provide the completed  
18 USM-285 forms to USMS. Plaintiff shall have until May 5, 2025, to furnish USMS with the  
19 required form.

20          **IT IS FURTHER ORDERED** that upon receipt of the issued summonses, the USM-285  
21 forms, and the copies of the operative complaint—and under Federal Rule of Civil Procedure  
22 4(c)(3)—USMS shall attempt service upon the Defendants.

23          **IT IS FURTHER ORDERED** that, within 21 days of receiving form USM-285 from  
24 USMS showing whether service has been accomplished, Plaintiff must file a notice with the  
25 Court identifying whether the Defendants were served. If Plaintiff wishes to have service again  
26 attempted on a Defendant, he must file a motion with the Court identifying the Defendant and  
27 specifying a more detailed name and/or address for that Defendant or whether some other manner  
28 of service should be attempted.

**IT IS FURTHER ORDERED** that from this point forward, Plaintiff shall serve upon the Defendants, or, if appearance has been entered by counsel, upon the attorney(s), a copy of every pleading, motion, or other document submitted for consideration by the Court. Plaintiff shall include with the original papers submitted for filing a certificate stating the date that a true and correct copy of the document was mailed to Defendants or counsel for Defendants. The Court may disregard any paper received by a district judge or magistrate judge that has not been filed with the Clerk, and any paper received by a district judge, magistrate judge, or the Clerk that fails to include a certificate of service.

The deadline for any party to object to this recommendation was 4/17/25, and no party filed anything or asked to extend the deadline to do so. “[N]o review is required of a magistrate judge’s report and recommendation unless objections are filed.” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Having reviewed the report and recommendation, I find good cause to adopt it, and I do. IT IS THEREFORE ORDERED that the Magistrate Judge’s Report and Recommendation **[ECF No. 5] is ADOPTED in its entirety**. IT IS ORDERED that Plaintiff’s *Monell* claim based on a violation of the Fourteenth Amendment procedural due process clause is dismissed with prejudice, and his third claim entitled "Right not to be discriminated against" is dismissed as duplicative. Plaintiff is reminded that he has until May 5, 2025, to furnish the United States Marshals service with the required USM-285 forms so that the defendants can be served with process; service of process must be completed by July 2, 2025.

Page 7 of 7